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Contractual networks and economic development: a proposal by Italy for possible future work by UNCITRAL on alternative forms of organization to corporate-like models — advanced proposal

Note by the Secretariat

The Government of Italy has requested the Secretariat to transmit for consideration by the Commission at its fifty-first session an advanced proposal for possible future work by UNCITRAL on alternative forms of organization to corporate-like models (contractual networks). The text of the proposal is reproduced as an annex to this note in the form in which it was received by the Secretariat. An earlier version of the proposal was before the Commission at its fiftieth session, in 2017 (A/CN.9/925).

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Annex

Contractual networks and economic development: a proposal by Italy for possible future work by UNCITRAL on alternative forms of organization to corporate-like models — advanced proposal

I. Introduction

1. At the twenty-third session of Working Group I, held in Vienna from 17 to 21 November 2014, Italy and France submitted observations on Possible Alternative Legislative Models for Micro and Small Businesses (A/CN.9/WG.I/WP.87). At the twenty-eighth session of Working Group I, held in New York, from 1 to 9 May 2017 (A/CN.9/WG.I/WP.102), and then at the fiftieth session of the Commission, held in Vienna from 3 to 21 July 2017 (A/CN.9/925), Italy further submitted a more specific proposal for possible future work by UNCITRAL on alternative forms of organization to corporate-like models. Such observations and proposal by the Italian Republic aimed at presenting domestic legislative models applicable to micro and small businesses based on multiparty agreements that could organize cooperation and joint business, as well as eventually provide for the segregation of business assets without requiring the creation of a separate entity, but that could offer limited liability protection.

2. In particular, reference was made to cooperation among micro, small and medium-sized enterprises (MSMEs) through the so-called "contractual networks" (known and regulated under Italian law as "*contratto di rete*"). This model offers great flexibility in the organization of cooperation, as well as the possibility of segregation of assets and consequently limited liability protection. It facilitates internationalization of MSMEs and cross-border cooperation thanks to such flexibility and the range of different levels of cooperation it can offer. Moreover, it provides a tool to link MSMEs to larger companies by permitting MSMEs to be connected to the supply chain of such companies.

3. Working Group I is currently working on two separate instruments, one on business registration (A/CN.9/940 — Draft legislative guide on key principles of a business registry) and another on the statute of a limited liability organization (A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1 — Draft Legislative Guide on an UNCITRAL Limited Liability Organization, UNLLO). In the strong hope that the Draft legislative guide on key principles of a business registry be adopted by the Commission at its fifty-first session, and bearing in mind that the Italian proposal always meant to fill a gap between issues of business registration, on the one hand, and the establishment of a limited-liability organization, on the other hand, with a flexible contractual instrument, Italy is resubmitting its proposal for future work on contractual networks in the light of further insights, as it was agreed by the Commission at its fiftieth session (A/72/17, para. 455).

4. Work on contractual networks would be complementary to that on UNLLO. Both models would permit the strengthening of cooperation by regulating its organization. However, while UNLLO would require the establishment of an entity with legal personality [Recommendation 3 as in A/CN.9/WG.I/WP.99] and the sharing of a common activity, contractual networks in general would preserve the identity and autonomy of each member. Moreover, flexibility in contractual networks would even be greater than in the case of UNLLO, and permit also looser forms of cooperation, although keeping an element of organization by the very fact that contractual networks by definition require the sharing of a common project (so distinguishing contractual networks also from existing commercial agreements where elements of cooperation are present, as in the case of agency or distribution agreements).

5. The content of the present note delves into and articulates on the previous contributions submitted by the Italian Republic also in the light of individual requests for clarification received from other delegations either in the course or after the Commission's fiftieth session. Moreover, at this stage Italy tries to abstract to the maximum possible extent from the specificities of its own domestic legislation to facilitate the employment of a functional approach.

II. Background

Contractual networks and cross-border cooperation

6. MSMEs constitute the skeleton of domestic industrial and agricultural production systems. However, they experience serious hurdles to access global trade and global supply chains. These hurdles concern in particular: (1) access to capital; (2) access to technology, intellectual property rights, and know how; and (3) access to a qualified and well-trained labour force. In order to ensure the participation of MSMEs in global trade, access to critical resources has to be facilitated by promoting appropriate common legal frameworks.

7. Contractual networks (i.e. multiparty contracts between MSMEs located in the same or in different jurisdictions) address such hurdles, can contribute to internationalization and facilitate access to foreign markets. They can also help to link networks of local enterprises with foreign networks and permit specialization according to the market where each operates. Since they are based on contracts, there is no need for establishment in a specific country among those in which participants are based, nor for ownership integration, while still permitting to various extents governance control over the partners. In this sense, contractual networks could be compared to contractual joint ventures, although in the case of networks cooperation can even be much looser.

Business environment

8. MSMEs' growth is driven, among other factors, by the adoption of an appropriate legal framework to promote their coordination in order to favour economic growth and specialization.

9. Such growth can occur through integration in corporate entities or via contractual collaboration in various degrees.

10. These two families of legal instruments are complementary. The corporate-like family (company, cooperative) supports the integration of existing different enterprises when the level of mutual trust and reciprocal knowledge is high and the industrial project is well defined from the very beginning. The contractual family provides a set-up for enterprises to start new collaborations, in particular when they might not otherwise enter into a demanding and burdensome common industrial project. Lack of steady availability of physical capital or uneven access to financial resources among potential partners may also discourage MSMEs from entering into corporate-like forms of integration. The complementarities between corporate-like and contractual modes might establish a process whereby MSMEs start with contractual collaboration and end with the creation of new companies that integrate some of their activities, although this is not a necessary outcome. Complementarities to this end should be seen in terms of the different alternatives offered by the legal system to organize cooperation according to the needs.

11. Collaboration is a process that might require various steps. The first is through contractual collaboration that may or may not translate into the creation of a company with a higher degree of ownership integration of different types of assets including both tangible and intangible ones. Hence, the evolution of a contractual collaboration

over time should be compatible with dissolution, preservation or transformation of the contract into a corporate entity.

12. Contractual networks may provide such an instrument with a relatively low level of initial capital, low entry and exit costs, and a light governance infrastructure. Multiparty contracts may facilitate access to capital by providing joint collateral to credit institutions; they can facilitate access to new technologies with the creation of common technological platforms, where common intellectual property rights may be used. Access to a qualified labour force may be enabled through the possibility of sharing employees who may rotate among the enterprises participating in the network, thus increasing specialization and the effective use of human capital.

13. Contractual networks include different existing forms of multiparty contracts ranging from joint ventures to consortia, franchises or patent pools; they can take the form of either a single contract with several parties, or of a set of interlinked bilateral contracts with high levels of coordination and interdependence. These contractual models include production and distribution and can be domestic or international. They can provide MSMEs with the legal infrastructure to trade (for example, through e-commerce platforms and payment systems). Legal frameworks exhibit a great degree of differentiation between jurisdictions that make international MSME collaboration very difficult. In addition, choice of law and forum rules are unclear for multiparty contracts; and even less clear for interlinked contracts.

14. Essentially two forms of contractual networks are currently in place. *Horizontal networks* are networks in which various SMEs contribute to a common project with their *products or services*, playing a similar role along the supply chain or having similar expectations from the network programme (e.g. new trade opportunities for the sale of final products). Horizontal networks partaken by micro- and SMEs may play an important role in capacity-building and technology development, so enhancing SMEs' ability to get access to Global Value Chains (GVCs) or upgrade their position along the chain. *Vertical networks* operate along supply chains that include different stages of production/distribution. Participants in vertical networks (e.g. suppliers) perform activities (e.g. production of intermediate goods, supply of services) to be incorporated into the activity of another chain participant (e.g. an assembler) and the network is aimed at coordinating their interdependent activity along the lines of a chain project, often developed by a chain leader. Transnational Corporations (TNCs) look for stable relationships that decrease coordination costs and increase the stability of the supply required by global markets. In order to stabilize the supply chain governance, they need stronger coordination between local suppliers of inputs and intermediate goods and chain leaders. This process is reinforced by the increasing number of regulatory requirements, as on safety, environmental and social protection, to be applied along the global chain. In order to facilitate access to global trade, cross-border contractual collaboration is necessary and specific legal forms tailored to SMEs are needed. Such forms may contribute to the process of the internationalization of SMEs through or independently from existing global chains.

15. Finally, creativity and innovation with intellectual property protection and management are among the key drivers of competitiveness, growth and development. This underscores the importance of network contracts in giving rise to platforms with a view to jointly exploit intellectual property rights. In particular, MSMEs can share existing technology provided by one or more platform members, directly co-produce new technology within the platform itself or acquire technology licensed/transferred by subjects that are not party to the platform. Network contracts may also ease the provision of technical assistance given to MSMEs related to intellectual property by business and government bodies, by facilitating the transfer of information and knowledge to a single collective subject and its subsequent dissemination among the network members.

The legal institution under Italian law

16. The "contractual network" ("*contratto di rete*") was first introduced into the Italian legal system in 2009. It is an agreement by which "*more entrepreneurs pursuing the objective of enhancing, individually and collectively, their innovative capacities and competitiveness in the market, undertake a joint program of collaboration in the forms and specific clusters as they agree in the network contract, or to exchange information or services of an industrial, commercial, technical or technological nature, or to engage in one or more common activities within the scope of their business*". The scope of contractual networks can thus broadly differ, and kind and degree of cooperation are left to the free agreement of parties, as long as, through the determination of a common programme, strategic goals are shared that allow either the improvement of innovative capacity or the growth of competitiveness. Cooperation can range from a plain undertaking to exchange information or services, to the organization of cooperation, up to the joint conduct of economic activities. This leaves the door open to vertical (coordination of suppliers with shared standards of production, distribution or franchise chains), or horizontal integration (research and development, centralized point of sale or of acquisition). Under a recent amendment to the relevant legislation, business networks can also take part in public bids. The sole requirement to enter into a business network contract is to be an entrepreneur, irrespective of the nature and the activities performed. This includes sole ownership, companies of all kinds and enterprises owned by public entities, including those of a non-commercial nature, as well as for profit and non-profit entities (mixed networks do not seem to be precluded, where there are for-profit and non-profit participants). Business networks, although factually mainly used as a scheme for cooperation of MSMEs, are thus generally open to any businesses, including corporations and groups. Eventually, a very recent reform (as of 2017) has extended the use of mixed network contracts, partaken by businesses and professionals, when established for participating in public bids.

17. In order to carry out the programme of the contractual network, contracting parties may establish a common fund. This is a separate fund exclusively devoted to implement the programme of the network and the pursuit of its strategic objectives. Creditors of individual participants to the network cannot rely on the fund, which only serves to satisfy claims deriving from the activities performed within the scope of the network. Publicity is given by registration in the business registry.

18. Business networks do not normally have legal personality, nor necessarily need to be established as a separate entity. However, recent amendments to relevant legislation (as of 2012) permit these to also be established as a separate entity.[1]

19. Contractual networks under Italian law can be seen both as a form of aggregation around a project, as well as a tool to start a process of aggregation that can lead to more structured forms, such as more binding and articulated contractual network schemes, the constitution of new companies equipped with legal personality, up to business mergers.

20. This gradual approach can be possibly divided into three distinct situations (that can yet also be kept as a permanent arrangement):

- A "light" network of companies is created, which carries out an activity that is often only internal, that is, without involving subjects other than the members, which does not have a common fund, and whose common body (if established) is composed of the members themselves, who periodically meet to take decisions. In this first situation, the commitment of the participants is limited, a contract has been signed with specific rules of conduct before a notary, limited capital has been invested, meetings take place and joint activities are carried out using the respective companies' structures: a way to pursue a common project

[1] A more articulated description of the Italian law on contractual networks is contained in the annex to A/CN.9/WG.I/WP.87.

and test each other, without compromising the company's autonomy or investing large amounts of capital. The risk associated with the joint and several liability of the members is low, given that only activities within the network are carried out;

- The participants can decide to expand the network activity, which from "light" becomes "heavy", creating a common equity fund to support greater investments, equipping themselves with a structure dedicated to the management of the network programme. If the common body is established and the network carries out an activity, including commercial activity, towards third parties, assuming obligations towards the latter for the execution of the programme, the network can be subject to a special regime that limits the liability of the participants or network operators. This occurs by the segregation of assets produced by the constitution of the common equity fund;

- The network can also sign contracts and take on liabilities, i.e. to become an independent centre for the rights and obligations, and requires legal subjectivity by registering in the ordinary section of the business registry of the place where it is based. The common body is no longer a proxy for the participants in the network but an independent legal entity. Participants are now in a position to perform common external activities in an efficient and stable manner, for example by selling products designed or built together or by carrying out commercial or marketing actions coordinated on foreign markets. This activity will be carried out directly by the network following the request for legal subjectivity and consequent attribution of a VAT number.

21. The above illustration of a possible gradual approach only shows the role of these new legal institutions within the existing Italian business and legal context, since all described activities can be performed under any of the proposed schemes of cooperation, and each can be considered as a permanent instrument for cooperation according to the needs.

22. Flexibility and scalability are two features of this legal institution that make it exportable and of universal use.

23. To that end, as indicated above (para. 4), Italy refrains from making direct reference in the following parts of this Note to its own legal system. However, to help understand the concrete content of a possible international instrument and to anchor this exercise to existing regulated forms of organization of business cooperation, a few tables are included with main features of contractual networks in order to compare them with the most proximate existing legal institution in the Italian legal regime for the purposes of this Note.

III. Legal Framework

An integrated modular proposal of an international instrument on contractual network: also a means to look at sustainable development and the respect of corporate social governance

24. Whereas we believe that instruments for micro enterprises (MiEs) might differ from those for SMEs, we would envisage a modular legal instrument with common general principles and possibly specific sections addressing different needs, according to dimension and/or mission.

25. Moreover, these general principles might be drafted having in mind a multilevel system: i.e., whatever is not explicitly regulated would be supplemented by national legislation, leaving scope for a certain level of differentiation in legal architecture. The international instrument would define the specific principles and provide the relevant definitions but some aspects (for example, mistake, fraud, or avoidance) could be left to the applicable contract law.

26. Most importantly, the structure of such principles should identify the new roles of contract beyond pure exchange, focusing on organizational and regulatory functions in order to ensure that network contracts can also promote compliance with global standards related to environmental, social, and data protection requirements, and should be applicable to both domestic and transnational networks.

27. These rules should ensure both the stability and the flexibility of the contractual network, and distinguish between internal relationships among members and relationships between the network and third parties, in particular, with creditors. Such rules could provide for different degrees of complexity with increasingly structured forms of governance, which could take place inside the network or could use companies controlled by the network to perform specific activities that require limited liability and asset partitioning.

28. *Contractual networks and the objective of the contract.* The distinctive feature of contractual networks should lie on their objective more than on their formal structure. Parties should agree on a specific set of actions for the achievement of one or more specific objectives which are of strategic relevance in respect of the business of each participant or for the network as such.

29. Though related with participants' nature and activity, the core object of the network activity does not need to be ancillary in respect of the participants' activity; several options should be available: from the mere organization of coordination of supply of goods, service or information among participants (e.g. through the establishment of a commercial platform) through collaboration into a strategic project (e.g. a Research and Development (R&D) project for the development of a new product) to the performance of a common activity (e.g. the production and distribution of a new product jointly designed).

30. Model rules should allow parties to tailor the network structure upon the network nature and objectives. Model rules should not define the possible contents of the common programme but, most importantly, require that objectives are clearly defined and that parties agree on modes for the subsequent specification of implementation measures, their assessment and adjustment along the network life.

31. Parties should be able to establish networks for the execution of a specific project or for the establishment of a cooperative platform able to run multiple projects. In multi-projects networks, parties should not be forced to partake to all projects but project participation should be tailored upon businesses' interest and capacity.

32. *Cooperation.* Cooperation shall remain the core element of contractual networks. In contractual networks cooperation implies willingness to combine individual and collective interests as well as ability to adapt choices in order to ensure that a network's objectives may be achieved.

33. Cooperation does not necessarily require equality of arms; powers and resources may be unevenly allocated as well as abilities and knowledge may differ from one participant to another.

34. Especially when these asymmetries are rather important, abuses should be discouraged through effective monitoring within the network and, when needed, through measures aimed at preserving the collective value generated by the network and its future functioning.

35. Specific investments made by participants should be preserved, especially when, also due to their size, network participants struggle to get alternative options out of the network.

36. *Duration.* Model rules should not require a specific duration.

37. However, parties should be encouraged to adapt duration in respect of the objectives pursued and the specific investments expected from participants.

38. *Entry and exit.* Model rules should require parties to clearly define whether a subsequent entry into the network is possible and upon which conditions. Parties

should be able to complement the network's capacity through the entry of new participants as well as to limit this entry when it is not functional to the implementation of the network programme.

39. Parties should also be requested to clearly define whether and which conditions voluntary exit is allowed, taking into consideration the consequences of exit for both the exiting participant and the remaining ones.

40. Similarly, cases and procedures for exclusion should be clearly defined in the contract and due process guarantees should be established for a correct balancing between the network's participants who exclude one member and the member who is excluded from the network.

41. Abuses should be discouraged and measures for addressing post-contractual imbalances should be available, including cooperative, corrective and compensatory measures.

42. *Knowledge development and transfer*. When defining a uniform legal framework, strategic importance might be accorded to knowledge transfers and innovation among the enterprises of the network and between the network and third parties. Contract rules become extremely important when knowledge cannot be "propertized" (e.g., cannot be made proprietary) either because no legal devices are available, or because the benefits of sharing are such that individual or even collective ownership would be inappropriate.

43. In particular, two problems usually emerge within network governance: (1) proportionality between investments, contributions and revenues, since lack of proportionality often emerges between individual investments and profits, and opportunistic behaviour by some members of the network might arise; and (2) the interest of the contractual networks might require protection against behaviour such as unfair competition, violations of trade secrets, or unauthorized transfers to third parties external to the network.

44. A special regime concerning trade secrets and intellectual property rights might also need to be devised so as to maximize incentives to produce innovation inside the network, but, at the same time, to generate strong safeguards against knowledge leaking outside the network.

45. Since creation and use of intellectual property rights might be too expensive for individual MSMEs, forms of collective ownership and licensed use might be regulated by multiparty contracts making innovation also possible for firms with limited capital. A network contract may provide the legal infrastructure to manage the IPR platform

46. *Contractual networks and choice of legal forms*. Whereas the functional and cooperative features of contractual networks should be clearly defined in model rules, choice of legal forms should not be limited to a specific type of contract or organization.

47. From the point of view of the legal structure, options could include:

- (Bilateral or) multiparty contracts which are normally closed or open to the subsequent entry of new participants, subject to the requirements established in the contract;
- Multiparty contracts with or without a specific governance structure such as an administrative or governing body, representing the interests of the network's participants, also in the relation with third parties;
- Multiparty contracts where assets, including any possibly established fund, are owned individually or collectively by network participants or, when requirements consistent with applicable law are met, by the network as a separate entity;

- Multiparty contracts in which parties may enjoy limited liability to the extent that due guarantees are given in favour of creditors and third parties consistent with general principles and limitations established in applicable law.

48. Beyond the scope of this Note could stand other structures, including, e.g., linked bilateral contracts (along the lines of franchising or strategic subcontracting) as well as the link between a multiparty contract and a bilateral contract as, for example, happens when a contractual network is aimed at the execution of a construction contract in private or public procurement. Linked contracts feature strong functional interdependence so that one contract cannot exist without the other, e.g. when a production contract is linked to a financing contract.

49. *Contractual networks and the corporate frontier.* Depending on applicable law, the boundaries between corporate-like forms and contractual forms may be blurred.

50. Determinants of the distinction between contractual networks and corporate entities may include: the degree of organizational complexity, the extent of liability (limited or not limited), asset partitioning, the type of agency relations involved, the existence of a common business activity.

51. The development of modular legal instruments for networks, going from merely contractual ones to more complex forms, including limited liability and/or the establishment of a separate legal entity constituted under specific conditions, could fill an important gap.

52. Indeed, networks may benefit from the choice of legal forms that enable participants to run a common activity (e.g. a joint R&D department or the production of a co-designed new product), with a common administrative and representative body and a common fund, without other elements of corporate forms; e.g., decision-making mechanisms may depart from the usual correlation with capital investments, or limited liability for certain network activities may be combined with joint and several liability for others.

53. We intentionally avoid reference to legal personality, since it has different meanings across legal systems. However, a line could be drawn between segregation of assets, on the one side, and establishment of a separate legal entity, on the other. Whereas in the latter case the separate legal entity is an autonomous centre of rights and obligations, segregation of assets maintains the relevance of a plurality of legal actors but yet might permit — following adequate publicity — creditors of the network to only rely on the segregated assets.

54. *Asset partitioning.* Consideration should indeed be given to instruments that permit the segregation of assets and the establishment of limited liability protection for the activities covered by the contractual network (or parts thereof), in order to offer an additional instrument to MSMEs.

55. In correlation with general principles, rules and limitations provided by the applicable law, these instruments should be tailored on the nature of the network programme (e.g. its ability to generate revenues).

56. Moreover, the scheme should be defined taking into consideration the interests of creditors and third parties, with special regard to those harmed by network activity. For example, depending on the applicable law and on the legal form chosen, networks could benefit from limited liability regimes to the extent that they build up an adequate financial structure, preventing commingling between network assets and participants' assets, and adopt accounting rules enabling full transparency and clear reporting on the use of network funds.

57. Finally, safeguards should be in place to avoid exposure of those affected by the network activity on an extra-contractual basis, such as consumers, to any limitation of liability when claiming damages.

58. *Cross-border networks.* Legal entities are established under a specific legal system and cannot depart from its rules if not for limited aspects of their activities. In

the case of contractual networks, flexibility is also ensured by the choice of the applicable law.

59. Specific rules concerning private international law might be appropriate in this context.[2] In multiparty contracts, when enterprises located in different jurisdictions want to collaborate there is a need to identify the applicable law to fill the gaps that are not explicitly regulated by the contract.

60. Freedom of choice of applicable law should be encouraged along the lines of other initiatives established at the international level.[3]

61. The international dimension may also require forms of mutual recognition when enterprises are registered in national business registries with different requirements.

62. To this latter extent, it would be advisable that the proposed international instrument permit coordination among the different business registration regimes in the countries of the network's members.

[2] The above considerations are without any prejudice to the competence of The Hague Conference on Private International Law.

[3] See The Hague Conference on Private International Law, *Principles on choice of law in international commercial contracts* (approved on 19 March 2015), available at https://assets.hcch.net/docs/5da3ed47-f54d-4c43-aaef-5cafc7c1f2a1.pdf.

Annex to the proposal

ELEMENTS TO BE REGULATED IN A CONTRACTUAL NETWORK UNDER ITALIAN LAW	
Identification of each participant	Needed for exact identification of the participants, in connection with the disclosure regime of the contract, that the law provides through its registration in the business registry.
Indication of the strategic objectives and the methods agreed between the participants to measure progress towards these objectives	The specification of the strategic objectives that the parties aim to achieve, must be accompanied by an indication of the manner in which they will measure, during the execution of the contract, the respective progress towards these goals.
Definition of a network program that contains the rights and obligations of each participant, and how to achieve the common objectives	The network programme and its implementation constitute the object of the contract. This programme must indicate: the rights and obligations of each participant or the specific arrangements allowing the performance of these obligations by the participants or the realization of the common purpose of all the participants.
Duration of the contract	The contractual network may not be concluded for an indefinite time. That does not mean that the parties may not proceed with its renewal, providing for automatic renewal in the absence of notice of cancellation by those who do not intend to keep the constraint of the network contract.
Methods of joining of other participants	The network contract must anticipate the possibility of subsequent adhesion of other entrepreneurs, it being understood that such a possibility must be governed by the original parties, which retain the right to define the network access requirements on the part of new participants and the modalities through which the original parties express their assent to the accession of the new entity.
Rules for taking decisions on every subject or aspect of common interest	The participants must define the mechanism by which decisions are taken regarding matters or issues of common interest.

THE AGREEMENT MAY OPTIONALLY INCLUDE:	
Appointment of a common body to manage the contract	The network contract may provide for the establishment of a common body, which can be made up of either a single or several persons, to manage the contract. The body receives a mandate for the direction and conduct of activities in the network agreement. It will represent the network if this is a separate entity, or the participants if this is not.
Establishment of a common fund	The optionally established fund has specific limitations as to its use, being finalized to the implementation of a network programme and then to the pursuit of strategic objectives. The contract must include the measurement and the evaluation criteria of its initial allocation and any subsequent contributions by the parties. Contributions may be in cash, in goods and services (provided they are capable of economic assessment).
Management rules of the fund	It would be appropriate to identify the subject to whom the management of the fund should be entrusted, or the modalities for the realization of investments and those for the use of common assets.

TEXT OF THE MAIN PROVISION OF ITALIAN LAW CONCERNING DEFINITION AND QUALITIES OF CONTRACTUAL NETWORKS

Article 3, paragraph 4-ter L.D. n. 5/2009 [as converted into law and further amended]

"1. With the contractual network, entrepreneurs pursue the goal of increasing, individually and collectively, their innovative capacity and their competitiveness in the market and ***to this end they are committed, on the basis of a common network program, to collaborate in forms and in areas predetermined*** *for the exercise of their companies or to exchange information or services of an industrial, commercial, technical or technological nature or to jointly exercise one or more activities falling within the scope of their business.*

2. The contract ***may also provide for the establishment of a joint equity fund and the appointment of a common body responsible for managing, in the name and on behalf of the participants****, the performance of the contract or of individual parts or phases of the same.*

3. ***The network contract that provides for the common body and the equity fund does not have legal personality, without prejudice to the faculty to purchase the same pursuant to paragraph 4-quater last part*** **[registration in the business registry of the network itself].**

If the contract provides for the establishment of a common equity fund and a common body intended to carry out an activity, including commercial activity, with third parties:

1) (...abrogated)

2) the provisions of articles 2614 and 2615, second paragraph, of the Italian Civil Code apply to the mutual fund as compatible [on funds of consortia]*; in any case,* ***for the obligations contracted by the common body in relation to the network programme, third parties can assert their rights exclusively on the common fund****;*

3) within two months after the end of the financial year, the common body shall draw up a balance sheet, observing, as compatible, the provisions relating to the statutory financial statements of the public limited company, and file it with the business registry of the place where it is located; Article 2615-bis, third paragraph, of the Italian Civil Code applies as compatible.

4. For the purposes of compliance with the provisions of paragraph 4-quater, the contract must be drawn up by public deed or authenticated private deed, or by deed digitally signed in accordance with articles 24 or 25 of the code referred to in the legislative decree of 7 March 2005, n. 82, and subsequent modifications, by each entrepreneur or legal representative of the participants, transmitted to the competent offices of the business registry through the standard model typified by decree of the Minister of Justice, in agreement with the Minister for the Economy and Finance and with the Minister for Economic Development (...)."

Consortia (with external activities, not just for internal organization of members) under Italian law	**Contractual networks under Italian law**
The establishment of a Consortium provides for a common organization for the regulation and performance of certain phases of the respective companies.	*In the Network the common organization is aimed at collaborating in forms and in areas predetermined for the exercise of the companies, or to exchange information or services of an industrial, commercial, technical or technological nature or to jointly exercise one or more activities falling within the scope of their business, on the basis of a common network programme.*
The Consortium is a legal and tax entity independent of the member companies, has its VAT/TVA number and its registration with the business registry.	*In the Network the companies are independent and no new entity is in principle created, unless the network registers as a legal entity with the business registry.*
Precisely because of its individuality, the Consortium also provides for an external activity, with its own business registration or various attestations, and, in the cases of Consortia set up as Consortium companies with limited liability, also its own patrimonial autonomy, equating it to limited liability companies.	*The Network does not have its own autonomy or its own business registration, but is registered in the register of each participant in the Network and acquires effectiveness, only after having noted the same on all the participants at their registration in the business registry, unless the network registers as a legal entity with the business registry.*
The activity of the Consortium is instrumental to the activity of the consortium members, putting in place an essentially mutualistic function.	*The Network Contract allows the exercise in common of activities not only instrumental but strategic for the development of the participating enterprises.*
In the Consortium an object must always be identified, which is its typical activity.	*The Network contract provides a programme, a commitment to achieve certain objectives; within this, it specifies the main objectives pursued, the procedures that will allow the achievement of these objectives and the criteria for their evaluation.*
The Consortium provides, just like companies, an administration organized with a single director or, more frequently, through a board of directors.	*A wide choice of schemes may apply to Networks, depending on whether the model of an "exchange network" [where parties only exchange goods or services] is chosen, with a very simplified structure, or "light Networks", executing more articulated activities with a more organized structure, also through the establishment of a common body, or "heavy Networks" to the point that the Network may have its own legal personality by registering it with the business registry.*

***Società di persone* under Italian law (broadly paralleling partnership under common law)**	**Contractual networks under Italian law**
Two or more persons confer goods or services for the joint operation of an economic activity in order to divide the profits. [A partnership is an unincorporated association of two or more individuals to carry on a business for profit.]	*The common organization turns around a project [see above for definition of contractual networks]*
Unlimited liability.	*In case of establishment of a mutual fund, for the obligations contracted in relation to the network programme:* - *Third parties can assert their rights exclusively on the common fund;* - *Creditors of the members have no right whatsoever over such mutual fund.*
Flexibility in regulation of organization, but within the general scheme of società di persone. *Notwithstanding the flexibility and easiness of establishment,* società di persone *are included in the general category of "companies".*	*Much stronger flexibility since there is no limitation by the reference to a specific general category. Autonomy of contracts applies.*